

### REMARKS

The Specification has been amended to use the proper format for the registered trademark ROUNDUP and to provide clarity. Applicant has amended paragraphs [00126], [00148], [00149], and [00150] of the Specification to correct typographical errors. The Specification has been amended to include the ATCC deposit information. A receipt from ATCC is attached. Applicant has amended claims 1, 3-6, 10, 14, and 20-29. Claims 8-9 have been canceled. New claims 30-31 have been added. These changes have been made to place the claims in better form for examination and to further obviate the 35 U.S.C. §§102(b), 103(a) and 112 rejections as set forth in the Office Action dated January 30, 2006. It is believed that none of these amendments constitute new matter. It is submitted that these amendments obviate the rejections. Withdrawal of these rejections is respectfully requested.

The Examiner has objected to claims 1, 6, 22, 23 and 28 for the inclusion of a blank line where the ATCC Accession number should be. Applicant has amended claims 1, 6, 22, 23, and 28 to include the ATCC Accession Number. Withdrawal of this objection is respectfully requested.

The Examiner has rejected claims 1-29, under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as his invention. Specifically, the Examiner has rejected claims 1, 6, 22, 23 and 28, and claims 2-5, 7-21, 24-27 and 29 dependent thereon, as being indefinite in that the recitation of "seed of soybean line designated 0509243" does not clearly identify the claimed soybean cultivar and seed and does not set forth the metes and bounds of the claimed invention. Applicant has amended claims 1, 6, 22, 23 and 28 to include the ATCC Accession Number. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claim 28 as being indefinite in the recitation of "A method of modifying fatty acid metabolism or modified carbohydrate metabolism into soybean". Applicant has amended claim 28. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 28 and 29 as being indefinite and confusing in

that the claims state that the resulting plant will comprise "the nucleic acid molecule and has all of the physiological and morphological characteristics of soybean line 0509243 listed in Table 1". Applicant has amended claims 28 and 29. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 8 and 9 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Applicant has canceled claims 8 and 9. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 1-29 under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant has amended claims 1, 6, 22, 23 and 28 to include the ATCC Accession Number. Additionally, the undersigned avers that:

- (a) access to the invention will be afforded to the Commissioner during the pendency of the application;
- (b) all restrictions upon availability to the public will be irrevocably removed upon the granting of a patent;
- (c) the deposit will be maintained in a public depository for a period of 30 years or 5 years after the last request or for the enforceable life of the patent, whichever is longer;
- (d) the viability of the biological material at the time of deposit was tested; and
- (e) the deposit will be replaced if it should ever become inviable or when requested at ATCC.

Accordingly, withdrawal of this rejection is respectfully requested.

The Examiner has rejected claim 20 in that the specification does not provide support for transforming the claimed soybean plant with a transgene encoding a stearyl-ACP desaturase, but rather teaches transforming the claimed soybean plant with DNA encoding an antisense sequence of stearyl-ACP desaturase. Applicant has amended claim 20. Withdrawal of this rejection is respectfully requested.

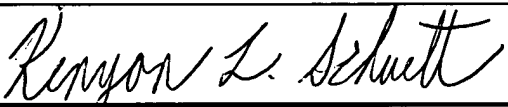
The Examiner has rejected claims 1-29 on the ground of nonstatutory double patenting over claims 1-18 of U.S. Patent No. 6,777,594. Applicant submits that there are differences between soybean cultivar 0509243 and the soybean cultivar S010350 of U.S. Patent No. 6,777,594. Soybean cultivar 0509243 has a relative maturity of 2.0 while soybean cultivar S010350 has a relative maturity of 2.3. Soybean cultivar 0509243 has a seed content composed of 34.8% protein and 19.8% oil, while soybean cultivar S010350 has a seed content composed of 35.6% protein and 18.7% oil. The differences listed above between the soybean cultivar of the present invention and the soybean cultivar S010350 make them distinct from one another. However, in the interest of expediting prosecution of this application, Applicant submits herewith a Terminal Disclaimer signed by Applicant's Attorney to obviate the nonstatutory obviousness-type double patenting rejection. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 1-29 under 35 U.S.C §102(b) as anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over U.S. Patent 6,235,978. Applicant submits that there are numerous differences between soybean cultivar 0509243 and soybean cultivar 02322470 of U.S Patent 6,235,978. Soybean cultivar 0509243 has a relative maturity of 2.0, while soybean cultivar 02322470 has a relative maturity of 2.7. Soybean cultivar 050924 has a seed content composed of 34.8% protein and 19.8% oil, while soybean cultivar 02322470 has a seed content composed of 42.0% protein (7.2% higher than for soybean cultivar 050924) and 21.0% oil. In addition, soybean cultivar 050924 is susceptible to *Phytophthora* Rot (races 1-11, 13-15, 17, 18, 22 and 24) while soybean cultivar 02322470 is resistant to *Phytophthora* Rot (races 1-11, 13-15, 17, 18, 22 and 24). Therefore, soybean cultivar 0509243 is novel and nonobvious over soybean cultivar 02322470. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 1-29 under 35 U.S.C §102(b) as anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over U.S. Patent 6,777,594. Applicant submits that there are differences between soybean cultivar 0509243 and the

soybean cultivar S010350 of U.S. Patent No. 6,777,594. Soybean cultivar 0509243 has a relative maturity of 2.0 while soybean cultivar S010350 has a relative maturity of 2.3. Soybean cultivar 0509243 has a seed content composed of 34.8% protein and 19.8% oil, while soybean cultivar S010350 has a seed content composed of 35.6% protein and 18.7% oil. Therefore, soybean cultivar 0509243 is novel and nonobvious over soybean cultivar S010350. Withdrawal of this rejection is respectfully requested.

In view of the above amendments and remarks, it is submitted that the claims satisfy the provisions of 35 U.S.C. §§102(b), 103(a) and 112. Reconsideration of this application and an early notice of allowance are respectfully requested.

|  |   |           |              |          |                |
|--|---|-----------|--------------|----------|----------------|
| SIGNATURE OF APPLICANT, ATTORNEY OR AGENT REQUIRED |   |           |              |          |                |
| NAME AND REG. NUMBER                               | Kenyon L. Schuett, Reg. No. 44,324  |           |              |          |                |
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**Date:** February 27, 2006

**To:** Kenyon L. Schuett  
**Fax Number:** 303-799-6898

**From:** ATCC Patent Depository **Number of pages:** 1 (Including this page)


**REFERENCE:** Patent Deposit (Ref: Docket or Case No: 1421-156, 1421-199, 1421-160, 1421-159)

**Description:** Soybean *Glycine max* (L.): 0509241 assigned PTA-7395  
Soybean *Glycine max* (L.): 4909380 assigned PTA-7396  
Soybean *Glycine max* (L.): 0509252 assigned PTA-7397  
Soybean *Glycine max* (L.): 0509243 assigned PTA-7398

**Date of Deposit:** February 16, 2006

The ATCC Certificate of Deposit will be forwarded to you within 30 days. An invoice will be sent under separate cover as follows:

**Total Fees for PTA-7395 to PTA-7398**      \$ 10,000.00  
(Storage/Informing/viability testing)

  
\_\_\_\_\_  
Marie Harris, Patent Specialist  
ATCC Patent Depository

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